International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2236/2013*, **

Communication submitted by:	Pavel Levinov (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	14 February 2013 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 26 February 2013 (not issued in document form)
Date of adoption of Views:	19 July 2018
Subject matters:	Refusal of authorities to hold a picket; freedom of expression; lack of fair trial
Procedural issues:	Exhaustion of domestic remedies; State party's failure to cooperate
Substantive issues:	Freedom of assembly; freedom of expression; fair trial
Articles of the Covenant:	2 (1), 5 (1), 14 (1), 19 and 21
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Pavel Levinov, a national of Belarus born in 1961. He claims to be a victim of a violation by the State party of his rights under articles 2 (1), 5 (1), 14 (1), 19 and 21 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 1 August 2012, the author submitted an application to the Pervomaysky District Administration of Vitebsk with a request to hold a picket on 20 August 2012 from 5.30 to 6.30 p.m.. The purpose of the picket was to inform the voters in polling station No. 35 of the Pervomaysky District of the 2012 elections to the House of Representatives, the lower

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

house of the National Assembly (parliament), about the composition of the District Electoral Commission that would be in charge of the elections and of counting their votes. In his application, the author specified that the picket would be conducted only by himself and that the intended location was near polling station No. 35 of Pervomaysky District, in the courtyard of residential building 39 at Moscow Avenue in Vitebsk.

2.2 On 13 August 2012, the application was rejected by the District Administration on the grounds that the location of the picket was not among the locations listed in the Vitebsk City Executive Committee's decision No. 881 of 10 July 2009 on public events in the city of Vitebsk.[1] The decision also stated that such events should take place in the park "30 Years of VLKSM", behind the Olympic reserve sport school "Komsomolets".

2.3 On 30 August 2012, the author filed an appeal against the decision of the District Administration with the Pervomaysky District Court. On 19 September, his appeal was dismissed. On 20 September, the author filed a cassation appeal against the District Court decision with the Vitebsk Regional Court. On 18 October, the Regional Court rejected the appeal.

2.4 The author did not file any application under the supervisory review proceedings to the Prosecutor's Office, since he did not consider that it constituted an effective domestic remedy.

The complaint

3.1 The author claims that Belarus has given precedence to its national law over its international obligations under the Covenant, in violation of article 2 (1) of the Covenant.

3.2 He states that the decision of the Pervomaysky District Administration amounted to an act aimed at limiting his right to freedom of assembly to a greater extent than is provided for in the Covenant and thus violated article 5 (1) of the Covenant.

3.3 The author claims that the courts reviewing his application against the decision of the District Administration acted in violation of the international human rights obligations of Belarus and were under the influence of the executive branch. Thus, his right to a fair hearing by a competent, independent and impartial tribunal provided for in article 14 (1) of the Covenant was violated. In support, the author refers to the report of the Special Rapporteur on the independence of judges and lawyers on his mission to Belarus in 2000 (E/CN.4/2001/65/Add.1) and notes that the Special Rapporteur's recommendations have not been implemented by the authorities. The author also makes reference to communication No. 628/1995,[2] in which the Committee found it incompatible with the provisions of the Covenant that the State party had given priority to the application of its national law over its obligations under the Covenant.

3.4 The author claims that his right to freedom of expression has been unduly restricted, in violation of article 19 of the Covenant. He claims that the restriction in question was not justified for the purposes of the requirements of article 19 (3) of the Covenant, i.e., was not in accordance with the law or necessary for the protection of the rights and freedoms of others and was not justified by reasons of national security or public safety, public order, or protection of public health or morals. He also refers to the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. and notes that the freedoms of opinion and expression are essential for any society and constitute the foundation stone for every free and democratic society.[3]

3.5 The author claims that his right to peaceful assembly was similarly restricted, in violation of article 21 of the Covenant, as the imposed restriction was neither in accordance with the law nor necessary in a democratic society.

[1] Decision No. 881 is based on the Public Events Act of 30 December 1997.

[2] The author refers to *Tae Hoon Park v. Republic of Korea* (CCPR/C/64/D/638/1995), para. 10.4.

[3] Reference is made to paragraph 2 of general comment No. 34.

Lack of cooperation from the State party

4. In a note verbale of 26 February 2013, the Committee requested the State party to submit to it information and observations on the admissibility and the merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.[4]

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee takes note of the author's assertion that all available and effective domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 Regarding the author's claim under article 2 (1) of the Covenant, the Committee recalls that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in and of themselves, give rise to a claim in a communication under the Optional Protocol.[5] The Committee therefore considers that the author's contentions in that regard are inadmissible under article 3 of the Optional Protocol.

5.5 Regarding the author's claim under article 5 (1) of the Covenant, the Committee observes that this provision does not give rise to any separate individual right. Accordingly, this part of the communication is incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.[6]

5.6 With respect to the allegations under article 14 (1) of the Covenant, the Committee observes that the author's claims refer primarily to the evaluation of evidence adduced during the court proceedings and interpretation of national laws, matters falling in principle to the national courts, unless the evaluation of evidence was manifestly arbitrary or constituted a denial of justice.[7] In the present case, the Committee is of the view that the author has failed to demonstrate, for the purposes of admissibility, that the conduct of the proceedings in his case was arbitrary or amounted to a denial of justice. The Committee consequently considers that this part of the communication has not been sufficiently substantiated and thus finds it inadmissible under article 2 of the Optional Protocol.

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[4] See, e.g., *Samathanan v. Sri Lanka* (CCPR/C/118/D/2412/2014), para. 4.2; and *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1997), para. 10.2.

[5] See, e.g., *A.P. v. Ukraine*, (CCPR/C/105/D/1834/2008), para. 8.5; and *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para 7.4; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 9.3.

[6] See, e.g., *X. v. Colombia* (CCPR/C/89/D/1361/2005), para. 6.3; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.3.

[7] Reference is made to paragraph 26 of general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, and to *Svetik v. Belarus* (CCPR/C/81/D/927/2000), para. 6.3, *Cuartero Casado v. Spain* (CCPR/C/84/D/1399/2005), para. 4.3; *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para 7.6; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 9.5.

5.7 The Committee notes next the author's allegations that his right to freedom of assembly under article 21 of the Covenant has been restricted arbitrarily, since he was refused permission to hold a picket. The Committee notes, however, that the author, according to his own submission, intended to conduct the picket on his own. Accordingly, in the circumstances of the present case, the Committee considers that the author has failed to sufficiently substantiate this particular claim, for the purposes of admissibility, and declares that part of the communication inadmissible under article 2 of the Optional Protocol.[8]

5.8 Regarding the author's claim of a violation of his rights under article 19 of the Covenant, the Committee finds it sufficiently substantiated for the purposes of admissibility, declares it admissible and proceeds with its consideration of the merits.

Consideration of the merits

6.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

6.2 The Committee notes the author's claim that his right to freedom of expression has been restricted arbitrarily, since he was refused authorization to hold a picket in order to publicly express his opinion. The Committee considers that the legal issue before it is to decide whether the prohibition on holding a public picket imposed on the author by the city executive authorities of the State party amounts to a violation of article 19 of the Covenant. From the material before the Committee, it transpires that the author's action was qualified by the courts as an application to hold a public event and was refused on the basis that the location chosen was not among those permitted by the city executive authorities. In the Committee's opinion, the actions of the authorities, irrespective of their legal qualification, amount to a limitation of the author's rights, in particular the right to impart information and ideas of all kinds, as protected by article 19 of the Covenant.

6.3 The Committee refers to its general comment No. 34, which states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that such freedoms are essential for any society.[9] They constitute the foundation stone for every free and democratic society. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*) or public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

6.4 The Committee recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 were necessary and proportionate. The Committee observes that limiting pickets to certain predetermined locations does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant. The Committee notes that neither the State party nor the national courts have provided any explanation to justify such restrictions. The Committee considers that, in the circumstances of the case, the prohibitions imposed on the author, although based on domestic law, were not justified for the purposes of article 19 (3) of the Covenant. The Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications.[10] In line with these precedents, the Committee concludes that, in the present case, the State party has violated the author's rights under article 19 (2) of the Covenant.

[8] See, e.g., *Coleman v. Australia* (CCPR/C/87/D/1157/2003), para. 6.4; and *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 7.7; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 9.7.

[9] Reference is made to paragraph 2 of general comment No. 34.

[10] See, e.g., *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para 8.3; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 10.3.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 19 (2) of the Covenant.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to (a) take appropriate steps to provide the author with adequate compensation; and (b) take steps to prevent similar violations from occurring in the future. In that connection, the Committee reiterates that the State party should revise its legislation consistent with its obligation under article 2 (2), in particular, decision No. 881 of the Vitebsk Town Executive Committee and the Public Events Act of 30 December 1997, as it has been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in Belarusian and Russian in the State party.